

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO ENTERO, .
ET AL, .
PLAINTIFFS, .
vs. . DOCKET NO. 5:21-CV-844-XR
AND 5:21-CV-1223-XR
GREGORY W. ABBOTT, ET AL, .
DEFENDANTS. .

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
JANUARY 11, 2022

APPEARANCES:
FOR THE PLAINTIFFS: SEAN MORALES DOYLE, ESQUIRE
BRENNAN CENTER FOR JUSTICE
120 BROADWAY
SUITE 1750
NEW YORK, NY 10271

RYAN V. COX, ESQUIRE
TEXAS CIVIL RIGHTS PROJECT
2911 N. MAIN AVENUE
SAN ANTONIO TX 78212

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NINA PERALES, ESQUIRE
MALDEF
110 BROADWAY STREET
SUITE 300
SAN ANTONIO TX 78205

DANIEL JOSHUA FREEMAN, ESQUIRE
DANA PAIKOWSKY, ESQUIRE
U.S. DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE
4CON 8.143
WASHINGTON DC 20530

FOR THE DEFENDANTS:

PATRICK K. SWEETEN, ESQUIRE
WILLIAM THOMAS THOMPSON, ESQUIRE
JEFFREY MICHAEL WHITE, ESQUIRE
TEXAS ATTORNEY GENERAL
P.O. BOX 12548
MC 009
AUSTIN TX 78711

REPORTED BY:

GIGI SIMCOX, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 (San Antonio, Texas; January 11, 2022, at 10:30 a.m., via
2 Zoom videoconference.)

3 THE COURT: Good morning. Let's call 21 civil 1223,
4 Longoria versus Paxton, along with 21 civil 844, LUPE versus
5 Texas.

6 First of all, before I ask for appearances, I'd ask
7 that everybody check their microphones to make sure you're
8 muted. We have a large number of individuals here.

9 We have more than 60 lawyers and participants here,
10 so to avoid feedback if you will mute your microphones unless
11 you will be speaking.

12 We are in the brand new courthouse for San Antonio
13 and this is our second week of experimenting with the new
14 technology, so I've been in here a few minutes early trying to
15 make sure that everything is in working order.

16 Let me stop here and double check with the court
17 reporter.

18 *(Off the record discussion)*

19 THE COURT: Let me ask for appearances.

20 Who is the lead attorney for Longoria?

21 MR. MORALES-DOYLE: Sean Morales-Doyle for the
22 Brennan Center for Justice on behalf of Isabel Longoria as a
23 plaintiff in the Longoria versus Paxton matter, Your Honor.

24 THE COURT: Thank you.

25 Who is the lead for the State?

1 MR. SWEETEN: William Thompson will be addressing the
2 motion. This is Patrick Sweeten. And on for the State also
3 is Jeff White.

4 So I'll let Mr. Thompson address the Court.

5 THE COURT: Thank you.

6 Who is the lead attorneys for the plaintiffs in the
7 consolidated matters?

8 MS. PERALES: Your Honor, good morning.

9 This is Nina Perales for the LUPE plaintiffs,
10 however, this morning we are going to have various different
11 counsel addressing the different issues that are before the
12 Court, and I would ask the Court to allow other counsel who
13 will be speaking today to introduce themselves.

14 THE COURT: Thank you.

15 And the lead for the United States.

16 MR. FREEMAN: This is Dan Freeman on behalf of the
17 United States. Dana Paikowsky from my office will be
18 addressing the consolidation motion.

19 THE COURT: Thank you.

20 So when an attorney does speak if you will clearly
21 identify yourself before speaking, that way the court reporter
22 is able to get a clear record.

23 So let's tackle some housekeeping matters first.

24 We had a motion for leave to file an amicus brief by
25 John Ashcroft, the Secretary of State for the State of

1 Missouri. Some of the litigants in the consolidated matter
2 has opposed that filing of the amicus brief.

3 I have considered the matter. The motion for leave
4 to file amicus is denied. There's very little need to have a
5 non-Texas entity raise issues in this case. And more
6 importantly, the amicus -- amici -- I'm not sure which is the
7 proper word here -- appears to be asserting positions that are
8 in contrast to what the State of Texas has previously argued
9 in the past.

10 So in past matters alleging discrimination the State
11 of Texas has argued that we can't be looking at old matters,
12 that we can only be looking at new, relatively, evidence on
13 discrimination, that we shouldn't be looking at the past.

14 And I'm not sure exactly where the State of Texas
15 argues the past is and where the present is, but the amicus in
16 this case seems to argue that we should be looking at Tammany
17 Hall for evidence of voting fraud. So it's, frankly, very
18 inconsistent and contradictory positions taken here.

19 So the motion for leave to file amicus brief is
20 denied. That takes care of Docket Number 171, which moots the
21 motion to appear pro hac vice for Mark Hearne, Docket Number
22 165, which also moots the motion to appear by Stephen Davis,
23 Docket 166, and finally the motion to appear by John Ashcroft
24 is also mooted, 167.

25 So with that taken up we now move to the State's

1 opposed motion to consolidate cases along with an opposed
2 motion to stay.

3 So Longoria now has filed a separate lawsuit. And
4 the argument from the State is that we should consolidate that
5 matter into the consolidated cases. Longoria argues that
6 these are distinct issues.

7 I want to make sure I understand the Longoria
8 position here, and so let's hear from Longoria's attorneys.

9 In the Longoria matter what is it specifically -- and
10 let me start here by saying this. In the Longoria case the
11 relief that you may be seeking in that case, I want to make
12 sure, is just regarding election officials, correct?

13 MR. MORALES-DOYLE: Election officials and public
14 officials, Your Honor.

15 So we represent both Isabel Longoria, who is the
16 elections administrator for Harris County, and Cathy Morgan
17 who is a volunteer deputy registrar in Travis and Williamson
18 Counties.

19 So, yes, election officials and public officials.

20 THE COURT: And I want to make sure I understand what
21 your client is trying to get relief for. So what is it your
22 clients specifically want to do that you believe SB 1 or
23 Election Code 31 prohibits?

24 MR. MORALES-DOYLE: A variety of -- sorry. I'm
25 getting a little bit of feedback. I apologize.

1 Essentially our clients want to be able to properly
2 advise and encourage voters to use whatever methods to allow
3 them to use to exercise their right to vote. And that
4 includes, for some voters, the opportunity to cast their
5 ballot by mail, which in Texas requires each year applying to
6 vote by mail.

7 And you know, the ways in which they encourage voters
8 to do that vary. In their declarations they give some
9 examples.

10 Miss Longoria often attends events where she provides
11 information about mail voting to voters, does paid advertising
12 and promotion in advance of election to encourage voters to
13 exercise their right to vote and advises voters both, at sort
14 of events like that, and on a one-on-one basis, their options
15 for casting their ballots, including the need to apply to vote
16 by mail each year.

17 And so I say there are a variety of things that each
18 of our clients would plan to do as they are -- as they have
19 set out in their declarations, unwilling to do now for fear
20 that they might be prosecuted or sued for engaging in those
21 activities.

22 THE COURT: So Mr. Thompson, I'm assuming you are
23 arguing, since you get all the hard matters.

24 The election code, as I understand this here, the
25 Secretary of State can post on the Secretary of State website

1 the various frequently asked questions and answer them, and
2 state in the website, and I think it does, as a matter of
3 public record if you look at the Secretary of State's website,
4 that the website identifies who is eligible to vote by mail
5 and how to do so.

6 Does SB 1 prohibit an election official or a public
7 official from publishing the same information on their own
8 websites?

9 MR. THOMPSON: Well, Your Honor, with the caveat that
10 I'm just getting into this issue since it was asserted last
11 week, my understanding is that the local officials I believe
12 are allowed to publish information on their websites that
13 matches what the secretary publishes on his website.

14 THE COURT: So now apart from the website, if they go
15 to a public gathering, can they say -- can they just hand out
16 a printout of that website?

17 MR. THOMPSON: Your Honor, I'm not aware, I guess, of
18 a restriction on that, with the understanding that I don't
19 have a full grasp of all the nuances on this area of the law
20 yet. But I guess what I should say is I do anticipate that we
21 will be arguing that the plaintiffs are overstating the effect
22 of SB 1 in their motion.

23 THE COURT: So then, and to be fair to the State, I
24 didn't ask them to be ready to argue any preliminary
25 injunctive relief here.

1 And so the reason I'm sort of asking these questions
2 is I'm trying to figure out whether the issues in this case
3 are truly distinctive (audio transmission gap), consolidated
4 cases, and so Mr. Thompson, (audio transmission gap) why they
5 should be consolidated?

6 I'm hearing that the issues in the Longoria matter
7 are solely related to election officials and public officials
8 and solely relate to what type of information --

9 So I'm being told that I was -- my audio lost for a
10 moment. Is that correct or not?

11 MR. THOMPSON: A word or two here and there. And I,
12 for some reason, now see the blank screen of the courtroom
13 deputy rather than Your Honor, but I can hear Your Honor fine.

14 THE COURT: And so I see that.

15 Why did the video go out?

16 *(Off the record discussion)*

17 THE COURT: Okay. There we go.

18 And are you able to hear me now?

19 MR. THOMPSON: Yes, Your Honor.

20 THE COURT: Okay. Thank you.

21 So Mr. Thompson, I think where I left off is the
22 Longoria matter seems to be solely related to election
23 officials and public officials and solely related to the legal
24 issue of what they can or cannot say, pursuant to the newly
25 enacted provisions of SB 1.

1 To the Court, it seems to me that these are distinct
2 issues from the matters raised in the consolidated case, but
3 I'll hear your arguments.

4 MR. THOMPSON: I appreciate that, Your Honor.

5 I'll start off by saying that it's worth noting the
6 plaintiffs thought they were related matters because this same
7 claim brought by this same plaintiff was included in the LUPE
8 original complaint that began this litigation.

9 So ECF-1 on our consolidated docket is the LUPE
10 original complaint. It listed as a plaintiff Isabel Longoria,
11 who is now the plaintiff in Longoria versus Paxton, and it
12 stated the same First Amendment challenge to the same
13 provision of SB 1.

14 So they thought they were related enough to go
15 together in a complaint before. We certainly think that made
16 sense at the time that the Court was consolidating all of the
17 different SB 1 complaints together, and the fact that they are
18 challenging different aspects of the same law.

19 It is worth noting that many of the other complaints
20 in this consolidated matter talk about this same provision of
21 SB 1. The Houston Justice plaintiffs are challenging the same
22 provision of SB 1, albeit they say it is on a different
23 theory. I think it's more of a Fourteenth Amendment theory
24 rather than a First and Fourteenth Amendment theory.

25 Other plaintiffs' complaints -- and we're talking

1 about the first amended complaints I believe -- talk about
2 this provision as well. Mr. Morales-Doyle has said in his
3 opposition paper that those plaintiffs are not challenging the
4 provision, they are merely including allegations about the
5 provision.

6 I'm not sure that's accurate. I suppose if it is,
7 I'd like to hear it from the plaintiffs representing -- I'm
8 sorry -- from the plaintiffs' lawyers who wrote those
9 complaints to confirm that those issues are not in their
10 complaints as I understood them to be.

11 And I think, Your Honor, the other aspect of this is
12 kind of separate and apart from whether the two cases are
13 going to be consolidated formally or not. I do think it makes
14 sense that they will have to take account of each other. And
15 that is greatly aided by the fact they are both in front of
16 Your Honor.

17 But Your Honor may recall, we entered a negotiated
18 schedule, an expedited trial schedule, to consolidate the
19 case, that was expressly premised on the plaintiffs'
20 representation that they would not be seeking preliminary
21 injunction.

22 We talked about it at the last status conference.
23 Mr. Morales-Doyle spoke about it expressly. He said, "On
24 behalf of the LUPE plaintiffs" -- which included plaintiff
25 Longoria -- "We do not intend to seek preliminary injunction."

1 And that was the basis for our schedule.

2 Now plaintiff Longoria has filed a new claim and a
3 new case seeking a preliminary injunction. That's in conflict
4 with what was said before and we think it undermines the basis
5 of the expedited trial schedule.

6 So that tension can be resolved in a couple of
7 different ways, Your Honor. I think the thing that makes the
8 most sense, in the light of plaintiff Longoria's previous
9 representation, is to hold the preliminary injunction motion
10 in abeyance, or at least give the State substantial extra time
11 to respond.

12 But if the Court is inclined to go a different
13 direction, we can talk about adjusting the consolidated trial
14 schedule to account for the fact that the State will now have
15 to respond to a serious preliminary injunction motion filed
16 over the holidays.

17 THE COURT: Mr. Thompson, let me ask you this then.

18 Assuming we go that second route, and I guess I need
19 to hear from Mr. Morales-Doyle on this as well, I've been
20 looking at this as solely legal issues. Is any discovery
21 necessary to either prosecute or defend this?

22 MR. THOMPSON: Yes, Your Honor.

23 I won't speak on behalf of the plaintiffs, obviously
24 they can. I think they said they don't need discovery, and
25 that's fine with the State of course. The State believes it

1 will need some discovery.

2 The plaintiffs have submitted at least two
3 declarations. There will likely be at least a little bit of
4 written discovery and two depositions in response to that.
5 But aside from the discovery, there will certainly be factual
6 development that the State will have to do.

7 While, of course, the State believes it should
8 prevail on some legal issues, of course the Court may not
9 agree with the State on some of the legal issues and may have
10 reached certain factual issues that go to the First Amendment
11 balancing test.

12 In effect, in this first amended complaint, as you've
13 just stated at a high level of generality, the plaintiffs are
14 asking the Court to weigh the benefits and burdens of the
15 challenged law and ask whether the burdens on related speech
16 are necessary to further compelling government interests.

17 That means we're going to -- as a practical matter,
18 need to put in some evidence regarding the government's
19 compelling interest and how the law furthers that, including,
20 as Your Honor mentioned before, perhaps history related to the
21 types of problems that this law addresses.

22 THE COURT: I'm not sure you'll need to reference
23 Tammany Hall.

24 MR. THOMPSON: Perhaps not.

25 THE COURT: So let me ask you the same question,

1 Mr. Morales-Doyle. Are you-all going to require discovery to
2 prosecute your claims?

3 MR. MORALES-DOYLE: No, Your Honor.

4 At least for purposes of the preliminary injunction,
5 we do not believe discovery is necessary.

6 And I actually think that, given the time frames that
7 we're working with here and the issues that are involved, I
8 am -- I do not understand the State's need for discovery on
9 these issues.

10 To address some of what Mr. Thompson said there, we
11 understood Your Honor in the initial hearing here, certainly
12 we understood that the agreement to an expedited trial
13 schedule was based in part on the plaintiffs in the
14 consolidated cases representing that they would not be seeking
15 preliminary relief, but we also understood Your Honor to be
16 encouraging all of the parties to pursue the prompt resolution
17 of legal issues to the extent possible in this matter.

18 And that is what we are trying to do in this now
19 separate matter of Longoria versus Paxton because we do think
20 that this is a fairly straightforward legal issue.

21 And in fact, if we are right, as we believe we are
22 about the way this law applies to Section 276.016 of the Texas
23 Election Code, the State's interest and what they are
24 attempting to -- the interest they are attempting to pursue
25 here is, frankly, irrelevant because this is viewpoint-based

1 discrimination and per se violative of the First Amendment.

2 But we -- because we don't think that discovery is
3 required, that there are factual issues at issue here that we
4 need a hearing, we don't think that the briefing of a
5 preliminary injunction motion, the filing of one brief by the
6 defendants in this case has any real impact on our ability to
7 proceed with the schedule that we are -- we have set in the
8 LUPE matter.

9 We, of course, agree with Mr. Thompson that while we
10 disagree that these cases should be consolidated, we agree
11 that they are at least related, which is why we marked the
12 Longoria versus Paxton case as a related case and we filed it.
13 And we think it is good that the Court -- that both cases are
14 before Your Honor so that they can take account of one
15 another, as Mr. Thompson said.

16 We don't think that requires changing the schedule in
17 either case. And we certainly don't think that it would make
18 sense to delay the resolution of a motion that is based on
19 irreparable harm to our clients because of the inconvenience
20 of filing a complaint.

21 THE COURT: Thank you.

22 So you are correct, Mr. Morales-Doyle, that I did
23 want to see legal issues given to me in increments as opposed
24 to having to decide everything at the end, and so this does
25 allow for that.

1 Mr. Thompson, one other matter that the plaintiffs in
2 Longoria brought up that was fairly persuasive to me, but I'll
3 give you a chance to argue otherwise, I had raised earlier in
4 the consolidated matter the awkwardness of having
5 Miss Longoria as both a plaintiff and a defendant, and that
6 cures the issues on joint defense and privilege and everything
7 else. How do you respond to that?

8 MR. THOMPSON: Respectfully, Your Honor. I don't
9 think it cures anything. In consolidated cases --

10 THE COURT: I can't hear you, sir. Oh, there you go.

11 MR. THOMPSON: Sorry, Your Honor. Can you hear me
12 now?

13 THE COURT: Yes.

14 MR. THOMPSON: In consolidated cases it doesn't
15 affect who is a party to what claims or to what case.

16 So the fact that Isabel Longoria was a defendant in
17 one matter, a plaintiff in another matter, and those two cases
18 were consolidated, didn't make for a plaintiff and a defendant
19 in the same case.

20 By the same token, I understand that perhaps as a
21 practical matter the plaintiffs found it odd and inconvenient
22 to coordinate among themselves when they would have to speak
23 with a lawyer who is representing Isabel Longoria as a
24 plaintiff and as a defendant.

25 I think that's going to be a problem no matter what

1 for them though. I mean, she is still represented by the same
2 counsel and Mr. Morales-Doyle will still be involved in
3 whatever negotiations there are. So it doesn't -- it's not
4 clear to me at all how they can resolve any awkwardness by
5 talking to the same lawyers and saying, "Oh, well, you know,
6 we don't have a formal consolidation motion here," even though
7 they are related.

8 MR. MORALES-DOYLE: Your Honor, if I may briefly
9 address that.

10 THE COURT: Yes, sir. Go ahead.

11 MR. MORALES-DOYLE: Just to be very clear for the
12 record, while I represent Miss Longoria in her capacity as a
13 plaintiff in the Longoria versus Paxton matter, I do not and
14 have never represented her as a defendant in the consolidated
15 cases.

16 So to the extent I am coordinating with the other
17 plaintiffs' council in the LUPE matter, I am not doing so as
18 an attorney for Miss Longoria in the LUPE consolidated cases,
19 nor are we coordinating with her defense counsel on her
20 defense of the claims in the LUPE matter, which is why we do
21 think it is important that they remain separate in order to
22 allow for the type of coordination that we understood Your
23 Honor to be encouraging.

24 And I do also just want to note that the State
25 defendants have raised the potential, and it sounds like

1 Mr. Thompson may go into it now, that they may seek discovery
2 into the communications between the plaintiffs and the
3 consolidated cases on the basis of the fact that Miss Longoria
4 is also a defendant.

5 And so, you know, it is because of those
6 representations that I think some of the other plaintiffs'
7 counsel, for whom I do not speak, were uncomfortable with the
8 type of coordination that I think Your Honor was encouraging
9 before we separated the case.

10 So while I will say that I think we have waived no
11 common interest privilege, and we were comfortable
12 coordinating with the other plaintiffs' groups, I think as a
13 practical matter it was clear that it was going to be
14 difficult to do so while the cases were consolidated.

15 And I will also just respond to something
16 Mr. Thompson said earlier. I am one of the plaintiffs'
17 counsel that wrote the LUPE plaintiffs' complaint in the
18 consolidated cases, and I will say very clearly that we are
19 not challenging Section 276.016(a) (1) of the Texas Election
20 Code in the LUPE plaintiffs' matter.

21 And I think all the other plaintiffs' groups will say
22 the same, that these cases, while they both challenge
23 provisions of Senate Bill 1 simply do not challenge the same
24 provisions on the same theory and there will be no common
25 questions of law or fact at issue in the two cases.

1 THE COURT: Thank you.

2 So with regard to the pending motion to consolidate
3 cases, does anyone, any plaintiff from the consolidated cases,
4 Ms. Perales or Mr. Cox, do you want to chime in on this issue?

5 MR. COX: Judge, on behalf of the OCA-Greater Houston
6 plaintiffs, I think we really just echo what Mr. Morales-Doyle
7 said regarding the difficulty in coordination and in chilling
8 our ability to efficiently resolve the issues in this case.
9 It's something that we found to be a challenge from the
10 beginning.

11 In addition to the possibility of individual
12 discovery, we also have this concern, of any ability of the
13 plaintiffs to coordinate for efficiency also being potentially
14 subject to official records request of the general public
15 outside of this case, if privileges aren't protected.

16 And we certainly believe that, you know, there is a
17 privilege there, but at the same time we know that there might
18 be disagreements about that in the future, and it certainly
19 chills our ability to work together for an official resolution
20 of the case.

21 THE COURT: Thank you.

22 Anyone else from the plaintiffs' group? No one else.

23 Does the United States want to make any argument?

24 MS. PAIKOWSKY: Your Honor, Dana Paikowsky for the
25 United States.

1 I don't think we have very much to add here. Our
2 interest in this matter is in ensuring that we can have a
3 speedy and efficient resolution and progression of this
4 litigation. We agree that we think consolidation in this
5 instance will undermine that interest and make it difficult
6 for the plaintiff groups to coordinate.

7 THE COURT: Thank you.

8 Here's the ruling on the motion to consolidate. It
9 is denied. The Longoria case has distinctive legal issues
10 apart from the consolidated matters. Consolidation will not
11 necessarily reduce the complexity of the consolidated matter.

12 We can enhance movement of discreet legal issues by
13 proceeding on two tracts in the interest of judicial economy
14 and the interest to the public at large when being benefited
15 by having rulings issued on discrete issues as soon as the
16 Court can reach them.

17 So motion to consolidate is denied. That is Docket
18 Number 172.

19 The opposed motion to stay case is denied. That was
20 Docket Number 9 in 1223.

21 So then we'll have just the opposed motion for
22 preliminary injunction that needs to be addressed.

23 I will trust that, Counsel, you-all can reach
24 agreements as to what discovery needs to take place prior to a
25 hearing, what the briefing schedule should be. I will count

1 on you-all to work out those deadlines and present something
2 to me.

3 If you can't reach agreement on those deadlines, then
4 each party will submit to the Court its own independent
5 version of a scheduling order and then I will make the
6 decisions for you.

7 As you go forward on both any discovery and briefing,
8 I'll just sort of tip my hat as to issues that I'm already
9 interested in. So, you know, I'm curious about the
10 restrictions that are placed on election officials here. It
11 appears that if you're a private citizen, and fortuitously
12 just today on Texas Public Radio's website I saw an
13 announcement that if, well, if you're the president of the
14 League of Texas Women Voters, you can encourage people to vote
15 by mail and you can pass on all this information.

16 And so it's kind of odd that if a private individual
17 can do so, well, why the restriction on an election official?

18 The other oddity in my mind is, well, if you are a
19 public official running for office you get to encourage people
20 to vote by mail. But if you're a public official not running
21 for office, the statute seems to read that you're precluded
22 from encouraging people to vote by mail. And so I'm not sure
23 I understand why the distinction for all of that.

24 And of course, the League of Women Voters always does
25 a fine job and a fairly neutral job, but isn't it odd that we

1 let private citizens say anything to encourage voting by mail,
2 but election officials, who we should be trusting the most to
3 ensure free and fair elections, are gagged from saying
4 something? That strikes me as kind of odd.

5 So those are the kind of discrepancies that I'm kind
6 of interested in.

7 And also it's unclear to me, by reading of the
8 statute, what general information is, and where is the line.

9 So apparently you might be able to put on your
10 website the same information that the Secretary of State has,
11 but why isn't general information, "You can request a mail-in
12 ballot by sending your application to the following address"?
13 I'm uncertain about where the parameters of general
14 information lie.

15 So just a heads-up. I'm curious about those kind of
16 issues.

17 MR. THOMPSON: Thank you, Your Honor.

18 THE COURT: Mr. Thompson.

19 MR. THOMPSON: I'm not going to get into the merits
20 of Your Honor's questions right there. I just want a
21 clarification on logistics.

22 I believe that the State defendants, in the absence
23 of a ruling, face an upcoming deadline in the next few days
24 for responding to the PI motion. In light of the fact that
25 the parties are to submit a joint proposal, or if necessary

1 separate proposals, could Your Honor confirm that we need not
2 meet that other deadline?

3 THE COURT: Yes. You are correct. You do not need
4 to meet the deadline as of now.

5 So both of you work out a briefing schedule. Again,
6 if you can't reach an agreement, I will render one for
7 you-all, but I will not hold you to the current deadline.

8 MR. THOMPSON: Thank you, Your Honor.

9 THE COURT: I believe for now that handles everything
10 that I was asked to -- that I needed to address for today.

11 But while I have everybody on the line, let's go down
12 the list to see if there are any other matters that we
13 probably should at least talk about or consider right now.

14 From the Longoria case perspective,
15 Mr. Morales-Doyle, is there anything else we need to take up
16 at this time?

17 MR. MORALES-DOYLE: With regard to the Longoria case,
18 no. I think the schedule and the potential for discovery are
19 the biggest issues, and it sounds like we should be having
20 that conference on our own.

21 I think we do have something to raise in the LUPE
22 matter and I believe Ms. Perales may be prepared to speak on
23 that.

24 THE COURT: Thank you. We'll get there in a minute.

25 From the State's perspective, Mr. Sweeten or

1 Mr. Thompson, anything else we need to talk about today?

2 MR. SWEETEN: Your Honor, this is Patrick Sweeten. I
3 don't think there are any other issues that the State needs to
4 address today.

5 THE COURT: Thank you.

6 From the plaintiffs in the consolidated matters,
7 anything else we need to discuss today?

8 MS. PERALES: Yes, Your Honor.

9 The plaintiffs would like to inform the Court that we
10 plan to move for leave to file second amended complaints, in
11 light of the recent decision of the Texas Court of Criminal
12 Appeals in a case called *State versus Stephens*.

13 It's a decision that came down in December,
14 mid-December, right before the holidays, and it relates to the
15 authority of the Attorney General to bring criminal
16 prosecutions for election law violations.

17 Texas has moved for reconsideration, but the
18 plaintiffs do want to alert the Court to the fact that we feel
19 that we need to amend our complaints to conform our
20 allegations to that decision.

21 THE COURT: With that amendment -- I'm not even sure
22 what number we're at -- third amended? Would those amended
23 complaints moot the current motion to dismiss, or not?

24 MS. PERALES: I believe they would, but only
25 slightly. In terms of the amount of work for the Attorney

1 General, I think most of the arguments that they have advanced
2 they will still be advancing.

3 But we need to make changes with respect to the
4 allegations of the kind of scope of the authority of the
5 Attorney General with respect to prosecuting offenses, as well
6 as bringing civil cases for election law offenses under SB 1.

7 THE COURT: Mr. Sweeten, does the State oppose or not
8 oppose any amended complaints?

9 MR. SWEETEN: Your Honor, you know, we asked when we
10 were told that they were going to amend the complaint,
11 Mr. Thompson I believe wrote Ms. Perales and asked her to
12 provide, you know, a red line or information about the
13 specifics of what those changes were.

14 We got a categorical description back, but we were
15 told that that -- you know, that we couldn't see those. Now,
16 the Court needs to understand that we are under, obviously, a
17 very compressed schedule.

18 While Ms. Perales did describe them, it's not
19 completely clear what the changes are. So you know, at this
20 point, we'd like to see what those changes are and assess how
21 they would impact the overall schedule.

22 As the Court knows, we began filing motions to
23 dismiss in this case, and this Court, you know, had some
24 direction for the parties back in November. And so, you know,
25 it's hard for us to have a position on this without seeing

1 what those particular changes are, and what -- you know, how
2 that would impact the overall schedule.

3 So I think the best way would be to -- you know, I
4 think the rules require a filing of what the amended complaint
5 would look like anyway, and then we could assess, upon a
6 filing of those motions, you know, what our position would be
7 vis-a-vis this late change.

8 THE COURT: And that is fair.

9 So when you do file your motion for leave to file an
10 amended complaint, attach the version you would like to file.
11 But then let's provide a courtesy copy to Mr. Sweeten of a red
12 line so he's not having to do a laborious side by side to
13 figure out which words were changed.

14 Anything else that we need to talk about today,
15 Ms. Perales?

16 MS. PERALES: No, Your Honor. Thank you.

17 THE COURT: Anything else from any of the other
18 plaintiffs in the consolidated cases?

19 MR. MORALES-DOYLE: Nothing else, Your Honor.

20 MR. FREEMAN: Nothing from the United States, Your
21 Honor.

22 THE COURT: Thank you, Mr. Freeman. I was going to
23 get to you next. And nothing from the United States.

24 Okay, very well. Let's see if we can reach
25 agreements on the Longoria scheduling order.

1 And then I'll wait for the amended leaves -- motions
2 for leave to amend complaints.

3 At some point, though, folks, I have to rule on
4 motions to dismiss, and so I would -- let me think about this
5 here as I'm contemplating this.

6 It seems to me that you ought to respond to the
7 pending motions to dismiss on any areas that you can respond
8 to now, just so we can start teeing up some of this, because
9 at some point, you know, again, you're going to put the Court
10 in a very awkward position if you make me rule on everything
11 at the end and things are not fully briefed.

12 We've got to make this manageable. Hopefully I was
13 clear.

14 Very well. Thank you, everyone. This was productive
15 and we are adjourned.

16 (Proceedings concluded.)

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18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter. I
20 further certify that the transcript fees and format comply
21 with those prescribed by the Court and the Judicial Conference
22 of the United States.

23 Date: 01/18/22

24 /s/ *Gigi Simcox*
25 United States Court Reporter
262 West Nueve Street
San Antonio TX 78207
Telephone: (210)244-5037